

Narasayya Vs. Narasimma

Narasayya Vs. Narasimma

SooperKanoon Citation : sooperkanoon.com/777721

Court : Chennai

Decided On : Jul-18-1884

Reported in : (1883)ILR7Mad510

Judge : Hutchins and ;Brandt., J.

Appellant : Narasayya

Respondent : Narasimma

Judgement :

Hutchins, J.

1. Execution was taken out against the moveable property of a debtor under a small cause decree passed by a District Munsif, and he applied to the Munsif to be declared an insolvent. The question is whether the Munsif had jurisdiction to entertain the application under Sections 344 and 360 of the Procedure Code.

2. The former section enables a judgment-debtor to apply after either the arrest of his person or an order attaching his property, but every such application must be made to the District Court. Under the latter section the Local Government has invested all District Munsifs with the powers conferred on District Courts by Section 344 and the following sections, and 'the District Judge may transfer to any Court, in his district and so invested, any cause instituted under Section 344. Any Court so invested may entertain any application under Section 344 by any person

arrested in execution of a decree of such Court.'

3. The plain meaning is that when the debtor has been arrested he may apply direct to the Court which passed the decree, but that an application made by a debtor, who has not been arrested but against whose property an order of attachment has issued, must be made to the District Court, although it may afterwards be transferred to the Munsif. In the former case it is obvious that a prompt remedy is necessary for the liberty of the debtor.

4. The Munsif suggests that the second clause of Section 360 is merely illustrative, but we cannot accede to this view. The word entertain is in direct; opposition to the word transfer in the preceding clause. Our opinion is in accordance with the decision of the High Court of Bombay in *Purbhudas Velji v. Chugan Raichand* I.L.R. 8 Bom. 196, which led the Munsif to make this reference.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com